

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	CASE NO. BK08-80324-TJM
)	
CORY LEE LOSEKE and)	CH. 13
JESSICA CHRISTINE LOSEKE,)	
)	
Debtor(s).)	

ORDER

Hearing was held in Omaha, Nebraska, on July 14, 2008, regarding Filing No. 26, Motion for Turnover and Request for Sanctions, filed by the debtors. Charles Garman appeared for the debtors. No appearance was made on behalf of Geneva Roth Companies or Spellman and Roman.

Debtors filed a motion for turnover and request for sanctions, Filing No. 26. In the motion, the debtors asserted that a pre-petition creditor, Geneva Roth Companies, through a debt collection agency, Spellman and Roman, violated the automatic stay through a threatening telephone call during which the caller verbally abused the debtors and coerced a payment by threatening criminal sanctions. As a result of the threatening language, the collection agency received banking information and withdrew \$300.00 from the debtors' checking account. During the conversation with the collection agency, the representative of the agency was informed that the debtors were in bankruptcy, but the threatening continued.

Upon review of the motion and Exhibit A attached thereto, the court set a show cause hearing and ordered representatives of the creditor and the collection agency to appear and show cause why they should not be sanctioned.

Counsel for the debtors appeared at the hearing and informed the court on the record that he had served notice of the hearing and a copy of the motion and affidavit of the debtors on the creditor, but that he could not find an address for the collection agency. During the telephone conversation discussed above, the representative of the collection agency, Sidney Roman, refused to give an address.

No representatives of either the creditor or the collection agency appeared in person or by phone.

The court took judicial notice of the motion, Filing No. 26, and the certificate of service, Filing No. 33. Findings of fact were read into the record and shall be memorialized in this order.

The bankruptcy petition was filed on February 13, 2008. The telephone call and the withdrawal of funds from the account of the debtors occurred on May 21, 2008. The caller was informed of the bankruptcy filing but ignored that fact and coerced one of the debtors into providing banking information which allowed the caller to access the bank account of the debtors and withdraw \$300.00.

Such activity by a representative of the collection agency acting on behalf of the creditor is a willful violation of 11 U.S.C. § 362(a).

Counsel for the debtors has submitted an affidavit at Filing No. 35, itemizing the legal services his firm has provided to the debtors with regard to the matter and the fees debtors have incurred as a result of this incident.

The Bankruptcy Code, at 11 U.S.C. § 362(k), provides that an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorney fees, and in appropriate circumstances may recover punitive damages. The action by the representative of the collection agency in refusing to acknowledge the bankruptcy, threatening criminal prosecution if the debtors failed to immediately make a payment, and coercing the debtors into giving private banking information to the creditor are appropriate circumstances calling for the recovery of punitive damages.

IT IS ORDERED that the Motion for Turnover and Request for Sanctions, Filing No. 26, is granted. A separate judgment shall be entered in favor of the debtors and against creditor Geneva Roth Companies and the collection agency Spellman and Roman in the following amounts, to be paid by August 15, 2008:

1. \$300.00 representing the amount removed from the bank account;
2. \$924.00 representing attorney fees;
3. \$5,000.00 representing punitive damages for the outrageous action.

DATED: July 17, 2008

BY THE COURT:

/s/ Timothy J. Mahoney
United States Bankruptcy Judge

Notice given by the Court to:
*Charles Garman
Geneva Roth Companies
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.